

EXHIBIT A

TERMS OF USE

Last Updated: December 18, 2020

1-800-FLOWERS.COM® ("1-800-Flowers.com") or the Company, (as defined below), and its Affiliates (as defined below) (together with 1-800-Flowers.com, "us," "we," and "our"), welcome you to our family of brands website located at www.1800flowers.com, or with respect to our Affiliates, located at websites that link to these Terms of Use (collectively, the "Website"). A listing of our Affiliated Brands can be found [here](#). These terms of use ("Terms of Use") govern your use of: (i) our Website, (ii) our mobile applications, (iii) our social media applications (such as our Facebook App), (iv) any of our merchandising channels, including, but not limited to, internet, telephone, text messaging (SMS and MMS), catalog, radio, television, or Company-owned retail stores, and (v) any of our products and/or services that are made available to you through any of the foregoing (collectively, (i), (ii), (iii), (iv) and (v), together, the "Service"). The goal of the Service is to provide access to our wide selection of floral, plant, gift basket, gourmet food, gift and other products and services, as well as, information and ideas, to as wide an audience as possible. To ensure a safe, pleasant environment for all of our users, we have established these Terms of Use. In this way, you will know what you can expect from us and what we expect from you.

PLEASE BE AWARE THAT THESE TERMS OF USE CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT WAIVE YOUR RIGHT TO A COURT HEARING AND JURY TRIAL.

Note: You must be 18 years or older and the age of majority in your place of residence to use, subscribe, or register as a member of (or 21 years or older in the

event that you place a request for transmission of an order for a product containing alcohol) our Services.

A few of the products marketed by some of our Affiliated Brands may contain wine (alcoholic beverage) products. You must be an adult (21 years or older) to place a request for a wine product order, which we will then forward to our designated licensed retailer or winery for acceptance, sale and processing of your order. Similarly, the recipient of your wine product order must be 21 years or older to accept delivery. The shipping carrier shall require identification, age verification and signature of an adult at the time of delivery. By placing your request for a wine product order you certify under penalty of law that you and the intended recipient are at least 21 years old. Any willful misrepresentation of your, or the recipient's, age, to unlawfully obtain alcoholic beverage is a crime and the Company will cooperate with authorities to prosecute you and the recipient to the fullest extent of the law.

THESE TERMS OF USE ALSO APPLY TO ALL MERCHANDISING CHANNELS OF THE COMPANY AND ITS AFFILIATES INCLUDING, BUT NOT LIMITED TO, THE INTERNET, TELEPHONE, CATALOG, RADIO, TELEVISION, MOBILE DEVICE, SOCIAL MEDIA AND PARTICIPATING RETAIL STORES. BY ACCESSING ANY OF THE COMPANY MERCHANDISING CHANNELS, AND ANY AREAS OF THE SERVICE, YOU AGREE TO BE LEGALLY BOUND, AND TO ABIDE, BY THESE TERM OF USE.

Ownership, Trademarks and Patents

Our Website and the Service is operated by 800-Flowers, Inc. with offices at One Old Country Road, Suite 500, Carle Place, New York 11514 (the "Company"). 1-800-Flowers.com, Inc., or one of its Affiliates, own the following trademarks, listed [here](#). "Affiliates" are those persons or entities directly or indirectly controlling, controlled by, or under common control with 800-Flowers, Inc. One or more patents may apply to this Website, including without limitation: U.S. Patent Nos.

5,528,490; 5,761,649; 7,908,173; and 7,908,176. All other third-party trademarks, product names, and company names and logos appearing on the Service are the property of their respective owners.

Disclaimers and Limitation of Liability

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, AND TO THE FULLEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER THE COMPANY, NOR ITS AFFILIATES, NOR ANY OF ITS OFFICERS, DIRECTORS, OR EMPLOYEES, AGENTS, THIRD-PARTY SERVICE OR CONTENT PROVIDERS ("PROVIDERS"), MERCHANTS ("MERCHANTS"), SPONSORS ("SPONSORS"), LICENSORS ("LICENSORS"), OR THE LIKE (COLLECTIVELY, "ASSOCIATES"), WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, OR AS TO THE ACCURACY, RELIABILITY, OR CURRENCY OF ANY INFORMATION CONTENT, SERVICE, OR MERCHANDISE PROVIDED THROUGH THE SERVICE; EXCEPT THAT THE COMPANY DOES GUARANTEE (THROUGH ITS "100% SATISFACTION GUARANTEE") THAT YOUR FLORAL ARRANGEMENT WILL STAY FRESH FOR SEVEN DAYS AFTER DELIVERY AND THAT OUR FOOD STUFF PRODUCTS WILL BE WHOLESOME AND FREE OF SUBSTANTIAL DEFECTS, AND IF THEY ARE NOT, THE COMPANY'S SOLE MAXIMUM LIABILITY WILL BE, WITHIN ITS SOLE DISCRETION, NOT MORE THAN TO EITHER REFUND THE ACTUAL PURCHASE PRICE PAID BY THE CUSTOMER, OR TO REPLACE AND DELIVER AN EQUIVALENT FLORAL ARRANGEMENT OR AFFECTED FOOD STUFF PRODUCT AS SOON AS REASONABLY PRACTICABLE.

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, THE SERVICE IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS AND THE COMPANY SPECIFICALLY DISCLAIMS WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN OR ELECTRONICALLY DELIVERED INFORMATION GIVEN BY THE COMPANY OR ITS AFFILIATES, OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PROVIDERS, MERCHANTS, SPONSORS, LICENSORS, OR THE LIKE, SHALL CREATE ANY WARRANTY WHATSOEVER.

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL THE COMPANY, ITS AFFILIATES, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, MANUFACTURING, DISTRIBUTING, MARKETING, OR SELLING THE SERVICE, PRODUCTS, SERVICES OR THIS WEBSITE, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICE, INCLUDING, BUT NOT LIMITED TO, RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM THE SERVICE OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO THE COMPANY'S RECORDS, PROGRAMS, OR SERVICES.

UNLESS OTHERWISE SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, AND THE FULLEST EXTENT PERMITTED BY LAW, ALL PRICES AND DISCOUNTS FOR ANY AND ALL PRODUCTS OR SERVICES OFFERED FOR SALE ("OFFERS") ARE EXCLUSIVE OF APPLICABLE SERVICE AND SHIPPING CHARGES AND FEDERAL, STATE AND LOCAL TAXES. PRODUCTS AND OFFERS MAY VARY AND ARE SUBJECT TO AVAILABILITY, DELIVERY RULES AND TIMES. OFFERS CANNOT BE COMBINED, ARE NOT AVAILABLE ON ALL PRODUCTS AND SERVICES AND ARE SUBJECT TO RESTRICTIONS, LIMITATIONS AND BLACKOUT PERIODS. PROMOTIONAL OFFERS (AS DEFINED BELOW) ARE LIMITED TO ONE PER CUSTOMER ORDER, ARE NON-

TRANSFERABLE, ARE NOT FOR RESALE AND MAY NOT BE REDEEMED FOR CASH. PRICES AND CHARGES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

THE COMPANY RESERVES THE RIGHT, WITHIN ITS SOLE DISCRETION, TO REFUSE TO ACCEPT AND PROCESS ANY AND ALL CUSTOMER ORDERS AND TO SUSPEND, DISCONTINUE, AND REFUSE THE USE OR ACCEPTANCE OF ANY AND ALL OFFERS, PROMOTIONS, DISCOUNTS, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL SAVINGS PASSES, REWARD PASSES, FRESH REWARDS, POINTS, AWARD CARDS, APPRECIATION AWARDS, GIFT CARDS, GIFT CERTIFICATES, PASSPORT MEMBER BENEFITS, AND ANY AND ALL OTHER SIMILAR DEVICES AND PROMOTIONAL OFFERS OR CAMPAIGNS ("PROMOTIONAL OFFERS") IN THE EVENT OF ADVERTISING ERRORS AND/OR THE ACTUAL OR SUSPECTED MISUSE, FRAUD OR ABUSE ASSOCIATED WITH SAID PROMOTIONAL OFFERS OR CUSTOMER ORDERS.

YOU HEREBY ACKNOWLEDGE THAT THIS SECTION SHALL APPLY TO ALL SERVICES, INCLUDING, WITHOUT LIMITATION, PRODUCTS, SERVICES AND CONTENT AVAILABLE THROUGH ALL PROMOTIONAL CHANNELS OF THE COMPANY'S SERVICES AND THAT OF ITS AFFILIATES, INCLUDING, BUT NOT LIMITED TO, THE INTERNET, TELEPHONE, CATALOG, RADIO, TELEVISION, MOBILE DEVICE, SOCIAL MEDIA PLATFORM AND PARTICIPATING RETAIL STORES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

Third Party Service Providers

Some aspects of the Service may be dependent upon third party service providers, such as a wireless carrier or social media platform. We do not control such third-party service providers and are not liable for their acts or omissions. In addition, such third-party service provider may have their own terms, policies and

guidelines. You should become familiar with all such terms, policies or guidelines prior to using the Service through such third-party service provider.

Text Messaging - when you opt-in to our text messaging services, including SMS and MMS (collectively the "SMS Service"), we will send you an SMS message to confirm your signup. Depending on the messages you have opted-in to these may include order shipping/delivery status notifications and/or product marketing promotions. Message frequency varies. You may cancel the SMS Service at any time. Reply "STOP" to cancel and "HELP" for assistance. The SMS Service is provided by participating third-party mobile phone/wireless carriers. Message and data rates may apply. If you have any questions regarding your text or data plan, please contact your mobile phone/wireless carrier. Carriers are not liable for delayed or undelivered messages. If you have any questions regarding the Company's SMS Service, you may email us at: feedback@1800flowers.com, or call us at: 1-800-Flowers (1-800-356-9377).

Platform providers, such as Apple, Inc. and Google, Inc., that make our App available for download ("Platform Providers") are not parties to these Terms of Use. Platform Providers have no obligation whatsoever to furnish any maintenance and support services with respect to the App. In the event of any failure of the App to conform to the warranties herein, you may notify the applicable Platform Provider, and such Platform Provider may refund any purchases made through the App (if applicable). To the fullest extent permitted by law, Platform Providers will have no other warranty obligation whatsoever with respect to the App. You acknowledge that Platform Providers are not responsible for addressing any claims relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The Platform Providers are third party beneficiaries of these Terms of Use, and Platform Providers will have the right (and

will be deemed to have accepted the right) to enforce these Terms of Use against you as a third-party beneficiary thereof. You represent that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and you are not listed on any U.S. Government list of prohibited or restricted parties.

We may provide links and pointers to Internet sites maintained by others (“Third-Party Sites”) that are not affiliated with us and may be located in different countries and that may be subject to different regulatory and other legal requirements. These Third-Party Sites and store locations are only for your convenience and therefore you access them at your own risk.

CONTENT

Proprietary Rights

You acknowledge that the Service contains information, data, software, photographs, graphs, videos, typefaces, graphics, music, sounds, and other material (collectively "Content") that are protected by copyrights, trademarks, or other proprietary rights, and that these rights are valid and protected in all forms, media and technologies existing now or hereinafter developed. All Content is copyrighted as a collective work under the U.S. copyright laws, and the Company or its Affiliates or other third-party licensors may own a copyright in the selection, coordination, compilation, arrangement, and/or enhancement of such Content. You may not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Content, in whole or in part. If no specific restrictions are displayed, you may use the Content only for your personal non-commercial use and make copies of select portions of the Content, provided that, the copies are made only for your personal use and that you maintain any notices contained in the Content, such as all copyright notices, trademark legends, or other proprietary

rights notices. Except as provided in the preceding sentence or as permitted by the fair use privilege under the U.S. copyright laws (see, e.g., 17 U.S.C. Section 107), you may not upload, post, reproduce, or distribute in any way Content protected by copyright, or other proprietary right, without obtaining permission of the owner of the copyright or other property right. In addition to the foregoing, use of any software Content shall be governed by the software license agreement accompanying such software.

Third Party Content on the Website

The Company is a distributor and not a publisher of the Content supplied by third parties on the Service. Any opinions, advice, statements, services, offers, or other information that constitutes part of the Content expressed or made available by third parties, including Providers, Merchants, Sponsors, Licensors, or any user of the Service, are those of the respective authors or distributors and not of the Company or its Affiliates or any of its officers, directors, employees, or agents. NEITHER THE COMPANY NOR ITS AFFILIATES, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, NOR ANY THIRD PARTY, INCLUDING ANY PROVIDER, MERCHANT, SPONSOR, LICENSOR, OR ANY OTHER USER OF THE SERVICE, GUARANTEES THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY CONTENT, NOR ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

In many instances, the Content available through the Service represents the opinions and judgments of the respective Provider, Merchant, Sponsor, Licenser, subscriber, customer, or user, whether or not under contract with the Company. The Company neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, submission, posting, or statement made on the Service by anyone other than authorized Company employees. Under no circumstances shall the Company, or its Affiliates, or any of their respective officers, directors, employees, or agents, be liable for any loss or damage caused by your reliance on

any Content or other information obtained through the Service. It is your responsibility to evaluate the information, opinion, advice, or other Content available through the Service.

Accessibility Statement

The Company is committed to ensuring that our Website, mobile applications, as well as, our products and services are generally accessible to people of all abilities. The Company is actively engaged in the ongoing process of developing, testing and updating these platforms using the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 2.0, Level AA, as a guideline.

If you enjoyed using our Website, mobile applications or customer contact centers, or if you encountered difficulty with any of our platforms, we would like to hear from you in any of the following ways:

Email us at: Accessibility@1800flowers.com, or Call us at: 1-800-356-9377.

Copyright Agent

The Company respects the rights of all copyright holders and, in this regard, it has adopted and implemented a policy that provides for the termination of user privileges and membership in appropriate circumstances of users who infringe the rights of copyright holders. While we reserve the right to terminate the access of users who infringe or otherwise violate the rights of others in our sole discretion, if you are a repeat offender, your access will be suspended or terminated. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide the Company's Copyright Agent (identified below) with the following information required by the Digital Millennium Copyright Act, 17 U.S.C. Section 512:

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b. Identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- d. Information reasonably sufficient to permit us to contact the complaining party;
- e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The Company's Copyright Agent for notice of claims of copyright infringement on or regarding this Website can be reached as follows:

Copyright Agent

Attn: COPYRIGHT AGENT
1-800-FLOWERS.COM, INC.

One Old Country Road

Suite 500

Carle Place, NY 11514

Telephone: 516.237.6000

Facsimile: 516.237.6101

Email: copyrightagent@1800flowers.com

User Submissions

The Company does not claim ownership of any Content you submit or make available for inclusion on the Service. However, with respect to all such Content, including, without limitation, creative ideas, suggestions, content, postings, artwork, material or other submissions that you send, upload, transmit, post, submit or otherwise make available to us, whether via the Service, email, feedback, a public forum or otherwise (collectively, "User Submissions"), you hereby grant the Company and its Affiliates the worldwide, perpetual, royalty-free, irrevocable, transferable, non-exclusive right to use, communicate, reproduce, publish, display, perform, modify, alter, adapt, translate, sublicense, distribute, create derivative works from, commercialize, and exploit such User Submissions in any manner, including on the Service or any other web sites, in television programs, on radio, in books, magazines, articles, commentaries, and in any other medium now known or later developed without your consent. You also warrant that you own or otherwise control all of the rights to any User Submissions you submit or post on or to the Service or otherwise transmit to the Company and that our public posting and other public or private use of such User Submissions will not infringe the rights of any third party. You acknowledge that you are not entitled now, or in the future, to any compensation for any User Submissions you may submit or post.

No User Submissions, regardless of how they may be marked, will be received by us in confidence, nor shall they be subject to any express or implied obligation of confidentiality. Neither the Company, or its Affiliates, nor their respective officers, directors, agents or employees shall be liable for any use or disclosure of any User Submissions.

Except as otherwise specifically set forth to the contrary herein, and to the fullest extent permitted by law, you and your successors and assigns hereby waive any and all rights and remedies you may have against the Company, or its Affiliates, or

any of their respective officers, directors, employees, or agents now or in the future, and hereby release the Company, its Affiliates, and any of their respective officers, directors, agents and employees from any and all claims, demands, actions, causes of action, damages, obligations, losses and expenses of whatever kind relating to providing, posting, transmitting or making available through the Service the User Submissions to the Company, or the Company receiving, evaluating, and utilizing the User Submissions.

In addition, the Company may, in our sole discretion, at any time and without prior notice to you, suspend or terminate any public forum, any other portion of the Service, or the subscription or registration of any user who violates any of these Terms of Use, any of the rules, regulations or guidelines or for any other behavior that we in our sole discretion believe is in breach of these Terms of Use.

Use of Public Forums

A "public forum" means any publicly accessible message board, chat room, discussion group, folder, survey, contest, sweepstakes, user review and rate forum, or other interactive service or promotion on or accessible via the Service, and includes both public boards and folders. You must use, subscribe, or register in accordance with instructions that you will find on the Service in order to participate or register in accordance with instructions that you will find on the Service in order to participate or contribute to any public forum. You may not submit or post on any public forum, or send to any other public forum user or our employees, any material that is unlawful, harmful, threatening, abusive, harassing, defamatory, invades a person's privacy, violates any intellectual or other property rights, or is vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically, or otherwise objectionable, including, but not limited to, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law. You agree not to use any false e-mail address, impersonate any person or

entity, or otherwise mislead as to the origin of a communication or other Content, or attempt to do any such acts. You may not use any public forum in a commercial manner. You may not submit or post material that solicits funds, or that advertises or solicits goods or services. You may not submit or post any User Submissions or material that you know, or should have known, to be false. You may not submit or post messages regarding stocks or other securities. You may not submit, post, or transmit any information, software or other material that contains a virus or other harmful component.

The Company is not responsible for any User Submissions or material appearing in any public forum on the Service, except for Content created by one of our identified authorized representatives. We do not screen User Submissions for libel, obscenity, invasion of privacy, copyright or trademark infringement, accuracy, or for any other reason. We retain, however, the rights set forth below in "The Company's Rights" section.

Distribution/Uploading by Users of Third-Party Content

Except as otherwise set forth in these Terms of Use, you agree not to upload to or otherwise distribute on the Service any Content created or owned by others that is subject to any copyright or other proprietary rights of any third party. The unauthorized submission or distribution of copyrighted or other proprietary third-party Content is illegal and could subject you to personal liability for damages. You, not the Company, or its Affiliates or any of their respective officers, directors, agents, employees, Merchants, Providers, Sponsors, Licensors, or the like, will be liable for any damages resulting from any infringement of copyrights or proprietary rights, or from any other harm arising from such submission.

Compliance with Laws and Export Regulation

You agree to use the Content and this Service in compliance with all applicable laws, rules and regulations and in a manner that does not, in the sole judgment of the Company, negatively reflect on the goodwill or reputation of the Company or any of its Affiliates.

The U.S. export control laws regulate the export and re-export of technology originating in the United States. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals. You agree to abide by these laws and their regulations, including, but not limited to, the Export Administration Act and the Arms Export Control Act, and not to transfer, by electronic transmission or otherwise, any Content derived from the Service to either a foreign national or a foreign destination in violation of such laws.

The Company's Rights

The Company is not responsible for screening, policing, editing, or monitoring Content (including User Submissions). The Company (or its Affiliates) may elect, but is not obligated, to monitor, electronically or otherwise, areas of the Service and may disclose any Content (including User Submissions), records, or electronic communication of any kind and information you provide to the Company or its Affiliates, through the Service or otherwise, including all merchandising channels, (i) when we believe disclosure to be appropriate to comply with any law, regulation, or government or law enforcement request or to comply with judicial process; or (ii) if such disclosure is necessary or appropriate to operate the Service and/or the overall business of the Company and its Affiliates; or (iii) to protect the rights or property of the Company, users of the Service, Affiliates, subscribers, customers, recipients, Sponsors, Providers, Licensors, or Merchants. Subject to the "Copyright Agent" provisions above, if notified of allegedly infringing, defamatory, damaging, illegal, or offensive Content, the Company may investigate the

allegation and determine in its sole discretion whether to remove or request the removal of such Content from the Service.

The Company reserves the right to prohibit or remove conduct, communication, or Content (including User Submissions) from the Service, including any part thereof, for any or no reason, including, without limitation, Content that it deems in its sole discretion to be harmful to users of the Service, subscribers, customers, recipients, Providers, Merchants, Sponsors, or Licensors, content or service providers, the Company or its Affiliates, or any rights of the Company or any third party, or to violate any applicable law. Notwithstanding the foregoing, neither the Company, nor its Affiliates, Providers, Merchants, Sponsors, or Licensors can ensure prompt editing or removal of questionable Content after online posting. Accordingly, neither the Company, nor its Affiliates, nor any of their respective officers, directors, employees, agents or employees, nor any Provider, Merchant, Sponsor, or Lessor shall assume liability for any action or inaction with respect to conduct, communication, or Content (including User Submissions) on the Service.

Online Conduct

Any conduct by you that in the Company's sole discretion restricts or inhibits any other user from using or enjoying the Service will not be permitted. You agree to use the Service in accordance with these Terms of Use and only for lawful purposes. You agree that you will not use the Service to send unsolicited advertising, promotional material, or other forms of solicitation to other users, except in specified areas, if any, that are specifically designated for such a purpose. You shall not attempt to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by us in providing the Service. Additionally, you are prohibited from violating or attempting to violate any security features of the Service. The provisions of these Terms of Use are for the benefit of the Company, its Affiliates

and the Service Providers, Merchants, Sponsors and Licensors, and each shall have the right to assert and enforce such provisions directly against the violator on its own behalf.

Purchases

The payment terms displayed on our Service (which may differ from Affiliate to Affiliate) are a part of these Terms of Use and govern all services and products offered through any Service.

Privacy Notice

We recognize and respect the importance of maintaining the privacy of our users, customers and subscribers and have established a privacy policy as a result. In our Privacy Notice, which constitutes part of these Terms of Use, we describe why we gather information from users, customers, and subscribers, what information we collect, how we collect it, what we use the information for and how you can instruct us if you prefer to limit the use of information about you. We encourage you to carefully read our Privacy Notice.

Loyalty Programs and Promotion Offers

From time to time, the Company and its Affiliates offer Loyalty Programs and Promotional Offers under various names to our customers, members, visitors and users. In addition to the terms and conditions set forth in the Terms of Use, these Loyalty Programs and Promotional Offers may be subject to their own specific and additional terms and conditions displayed on the marketing materials and also at www.freshrewards.com and www.freshgift.com. Please be sure you have read and understand all of the terms and conditions of the Loyalty Programs and Promotional Offers before you purchase any of the products or services offered in association with these Loyalty Programs and Promotional Offers.

Indemnity

Except as otherwise specifically set forth to the contrary herein, and to the fullest extent permitted by law, you agree to indemnify, defend and hold harmless the Company, its Affiliates and any of their respective officers, directors, employees or agents, from and against any and all liability, claims, costs and expenses (including, without limitation, reasonable legal fees and expenses), brought by any third party alleging, arising, related or resulting from (i) your use (or use by any third party using your account) of the Service, including in violation or breach of the Terms of Use, (ii) your User Submissions, (iii) your violation of any rights of a third party, or (iv) your violation of any applicable law, rule or regulation. This indemnification obligation will continue after you stop using the Service. We reserve the right, at our own expense, to assume the exclusive defense and control of any claim or matter otherwise subject to indemnification by you at your expense, and you shall not in any event settle or otherwise dispose of any claim or matter without our prior written consent.

Termination of Usage; Updates to Service

The Company may terminate your access, or suspend your access to all or part of the Service, without notice, for any reason, including conduct that the Company, in its sole discretion, believes is a violation or breach of these Terms of Use, is in violation of any applicable law or is harmful to the interests of another user, customer, recipient, subscriber, a third-party Provider, Merchant, Sponsor, Licenser, content or service provider, the Company or its Affiliates.

We will not be liable if, for any reason, all or part of the Service is ever unavailable. We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof), with or without notice. We undertake no obligation to update, amend, or clarify information on the Service, except as required by law. Please remember when reviewing

information on the Service that such information may not represent the complete information available on a subject. In addition, subsequent events or changes in circumstances may cause existing information on the Service to become inaccurate or incomplete.

On occasion, information on the Service may contain errors. We reserve the right to, at any time without prior notice, correct any errors, inaccuracies, or omissions, and to change or update information.

Severability

If any term or other provision of these Terms of Use are deemed by a final court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other terms, conditions and provisions of these Terms of Use shall nevertheless remain in full force and effect to the maximum extent permitted by law. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court shall modify only the affected term, condition or provision to effect the original intent of the parties as closely as possible so that the contemplated transactions are fulfilled and the Company and its Affiliates are protected to the greatest extent possible.

Governing Law, Waiver of Jury Trial & Arbitration; CLASS ACTION WAIVER

The Service is controlled by the Company from its offices within the United States of America. The Company makes no representation that this Service or the Content is appropriate or available for use in other locations, and access to them from territories where Content is illegal is prohibited. Those persons and entities that choose to access this Service from other locations do so on their own initiative and are responsible for compliance with applicable local laws.

You agree that any and all claims, disputes, controversies, actions or proceedings relating to, or arising out of, the creation, production, manufacture, distribution,

promotion, marketing, advertising (including oral and written statements), use of, exploitation, or sale of any and all products and services of the Company and its Affiliates, through all merchandising channels, including, but not limited to, the internet, this Service, telephone, catalog, radio, television, mobile device and participating retail stores or the Content (collectively referred to as "Claims"), shall be governed by the internal substantive laws of the State of New York without regard to its conflict of laws principals and that any and all Claims shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association ("AAA") [or by a state small claims court of competent jurisdiction over the Claim and the parties.] Any Claim you may have must be commenced within one (1) year after such Claim arises.

You agree that: (i) the arbitration shall be conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by the AAA; (ii) the arbitration shall be conducted on submission, telephonically or at a location determined by the AAA pursuant to the Rules and Procedures of the AAA; (iii) the arbitrator shall have the authority to award actual direct damages only with no authority to issue any fines and penalties nor award punitive damages or equitable relief; **(IV) EXCEPT AS SET FORTH BELOW IN SUBPART (VI), THERE SHALL BE NO RIGHT TO LITIGATE YOUR CLAIM IN COURT AND NO RIGHT TO A JURY TRIAL, (V) YOUR CLAIM SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS, AND YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY, OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION, AND THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED AND MAY ONLY RESOLVE CLAIMS, AND RENDER AWARDS BETWEEN YOU AND THE COMPANY AND ITS AFFILIATES ALONE;** and (vi) you may elect to bring your claim in a state small claims court of competent jurisdiction over the claim and the parties. With the exception of subpart (v)

above, if any part of this arbitration provision is deemed invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures of the AAA, then same shall be stricken and the balance of this arbitration provision shall remain in effect and construed accordingly. For more information on the AAA and its Rules and Procedures, you may visit the AAA website at www.adr.org.

Notice for New Jersey Residents

Under the New Jersey Truth-in-Consumer Contract, Warranty and Notice ACT (“TCCWNA”), N.J.S.A. 56:12-14 et seq., consumers may not be offered any written contract that includes any provision that violates any clearly established legal right of a consumer, or responsibility of a seller, as established by state or federal law. Consequently, and for the avoidance of doubt, no provision in these Terms of Use shall apply to any consumer in New Jersey if the provision violates any such clearly established legal right or responsibility, including, but not limited to, grounds for redress under or in the event of: (i) seller’s tortious actions (e.g., negligence, failure to exercise a basic standard of care, failure to avoid creating an unreasonable risk of harm); (ii) the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, et seq. (i.e., the statutorily imposed duty to refrain from manufacturing and selling dangerous products, with the possibility of punitive damages for violations thereof); (iii) the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq. (i.e., the statutory right to pursue punitive damages in the event of harm caused by actual malice, wanton and willful disregard, reckless indifference); (iv) the New Jersey Uniform Commercial Code (i.e., a comprehensive statutory regime governing the rights and duties of buyers and sellers with respect to contracts for the sale of goods, with the possibility of damages for economic and property harm); and (v) seller’s failure to reasonably protect against harm arising from certain criminal acts of third parties (e.g., computer hacking and identity theft, as regulated by the Federal Trade Commission and the Federal Communications Commission, and as governed by the New Jersey Identity Theft Protection Act,

N.J.S.A.56:8-161, et seq., and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-3, et seq.). In addition, under the TCCWNA, no consumer contract may state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable in New Jersey. With respect to these Terms of Use, in the section on Limitations of Liability, the provision concerning the exclusion or limitation of certain damages is not applicable in New Jersey with respect to punitive damages, loss of data, and loss of or damage to property.

Notice for California Users

Under California Civil Code Section 1789.3, California users of the Service are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N. 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

Acknowledgment and Changes

These Terms of Use, together with our [Privacy Notice](#), and all other documents incorporated herein by reference, represent the entire understanding between you and the Company regarding your relationship with the Company and supersedes any prior statements or representations. You will not assign any of your rights or delegate any of your obligations under these Terms of Use without our prior written consent. YOU AGREE TO BE BOUND BY THESE TERMS OF USE by accessing any areas of the Service, or using the telephone, catalog, radio, television, mobile device and Company-owned retail stores. Our failure to insist upon or enforce strict performance of any provision of these Terms of Use shall not be construed as a waiver of any provision or right. We may send you responses or notices by e-mail, posting via the Service, or written communication sent by the U.S. Postal Service. You agree that all agreements, notices, disclosures, and

other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Please note that our Mobile Applications are not available to be downloaded outside of the continental United States.

We reserve the right to change the Terms of Use at any time. If we make any change to the Terms of Use, we will post those changes on this Website, or any other appropriate page, and they will become effective upon the later of 1) the date specified by the Company, if any, or 2) the posting. By accessing the Service after changes are made to the Terms of Use and posted on the Service, you agree to be legally bound and to abide by the amended terms.